

STATEMENT OF STEVEN TESAM**CHAIRMAN, VIEJAS BAND OF KUMEYAAY INDIANS****HOUSE COMMITTEE ON RESOURCES****HEARING ON H.R. 1239****OCTOBER 17, 2001**

Chairman Hansen and members of the Committee, I would like to thank you for the opportunity to testify on the subject of H.R. 1239. As Chairman of the Viejas Band of Kumeyaay Indians, I have been deeply involved with issues surrounding the SIHC Health Clinic from its inception. My appearance here today is with full authority and direction from the Viejas Tribal Council and our general membership. While this issue may seem less significant than many of the wider issues faced by this committee, I submit that the preservation of the SIHC Health Clinic is an important issue, not only because it preserves access to health care for thousands of people, both tribal and non-tribal, but also because of the precedents that could be set for Indian Country.

In some ways, this issue is unique - many knowledgeable people have told us that they are aware of no other situation where land was taken into trust for the benefit of multiple sovereign Indian tribes. Unlike many Native American issues before this committee, however, the SIHC Health Clinic issue is not about the rights of tribes versus the state or federal government, but rather the rights and obligations of tribes with respect to other tribes.

As you may know, the clinic that currently occupies the site in Alpine, California was the culmination of many years' work on the part of seven tribes to find the best way to provide access to health care for tribal members in a remote area of San Diego County. The clinic was previously located on the reservations of two other tribes at different times, but these arrangements were unsatisfactory for a number of reasons. In the mid-1980's, the tribes unanimously decided that the fairest resolution would be to find a neutral site, located as centrally as possible between the seven reservations, and to construct a new, permanent facility on the neutral site.

This proposal for a permanent clinic site might never have become a reality without the help of the author of H.R. 1239, Rep. Duncan Hunter. I would refer you to Attachment A, which is Rep. Hunter's letter to the Bureau of Indian Affairs, dated June 13, 1985 seeking to have the Alpine site taken into trust for the new health clinic.

The question of how the land came to be titled to the Cuyapaipe tribe is not entirely settled. Attachment B, the BIA memo describing the land to be taken into trust, yields little information on this. There seems to be some memory among our elders that it was done by drawing straws or some other arbitrary means, although others have argued that the fact that Cuyapaipe was the smallest tribe played a role, and there is some evidence of this in the BIA memo. One thing is certain: the titling of the land to one tribe (rather than all seven) was done as an administrative convenience, and like many other things done for administrative convenience, it seems to have caused more problems than it solved.

There was clearly some controversy involved with taking the land into trust in Cuyapaipe's name alone, as evidenced by Attachments C and D: the Manzanita Tribe's letter protesting the BIA decision, and the Jamul

Tribal Council Resolution calling for the land to be taken into trust for all seven Tribes, respectively. In retrospect, Jamul's position seems to have been the correct one. However, at the time, Indian gaming was in its infancy, and no one could possibly have foreseen that any tribe might want to use this land for anything other than its stated purpose, so the argument seemed largely academic.

One sub-issue that seems to command a lot of attention is the question of whether federal Community Development Block Grant funds were used to pay for the acquisition of the land. There is no dispute that CDBG funds were used for the development of the clinic, but there seems to be some disagreement as to whether they were used to acquire the land; the Cuyapaipe tribe maintains that they were not.

In the interest of clarity, let me emphasize this: Viejas does not believe that CDBG grants are the most important issue here, and we only pursue it because some in Congress seem to consider it important, and because others have accused us of misrepresenting the facts. But we do believe that CDBG funds were used to purchase the land. I would refer you first to the third paragraph of the BIA memo, which reads "[t]he Band received a Community Development Block Grant in the amount of \$446,840 from the Department of Housing and Urban Development for the purpose of **purchasing the land** (emphasis added) and constructing a health care center..."

We are aware of two contradictory letters sent by HUD's Office of Public and Indian Housing on the subject. The first (Attachment E) said very clearly that CDBG funds were used to purchase the land. The second (Attachment F) partially retracted the assertions of the first, and said instead that HUD's records were insufficiently specific to say exactly how the funds were used, and that Cuyapaipe's accounting seemed to indicate that they were not used to purchase land.

Cuyapaipe's version of the story, to the extent that it has been consistent, is that the funds were used to collateralize a loan, the proceeds of which were used to purchase the land. Setting aside the fact that this, if true, represents a criminal violation of federal law, Viejas insists that this still constitutes federal funds being used to purchase the land. Perhaps the funds were used indirectly, but value gained from the federal grants contributed to the acquisition of the land.

Again, Viejas doesn't consider the question of CDBG funds to be the essential argument in favor of H.R. 1239.

In any case, the SIHC Health Clinic served the tribal community well for the ensuing decade, and began to accept non-tribal members as patients as a means of enhancing operating revenue. Recently, the Cuyapaipe tribe announced their plans to change the use of the Alpine site by moving the health clinic to temporary structures and to use most of the current health clinic site for a casino. To this end, the Cuyapaipe tribe sent to the BIA a request to relinquish the 25-year lease on the property in question. That lease relinquishment request was rejected by BIA on the basis of incomplete information, but a new proposal has been submitted (attachment G).

In addressing this request to terminate the lease of the SIHC Health Clinic, I should start by saying that Viejas supports the rights of tribes to have gaming facilities on reservation lands; Viejas is a gaming tribe, and we believe that there is a fundamental question of tribal sovereignty involved. The issue here is this: the land upon which the health clinic sits today was taken into trust for one purpose and for one purpose only: to provide a permanent health clinic for the benefit of the members of seven tribes. The fact that the land was titled to the Cuyapaipe tribe, as a matter of administrative convenience, does not give one tribe the right to change that use.

It is true that some members of the board of directors of the Southern Indian Health Council voted to approve the change in land use - three voted yes, two voted no, and two abstained. There is a legitimate legal question as to whether this vote satisfies the requirement of a true majority vote under California corporation law. But there is a more fundamental question: Should a piece of land that was taken into trust by the federal government as a way to provide health care access for the members of seven tribes have its designated use and purpose changed without the approval of all seven of those tribes. We at Viejas believe that the appropriate answer to that question is no.

We have heard any number of promises from the Cuyapaipe tribe about new and better health clinics that will result if only they can get their casino into operation on the current SIHC Health Clinic property. However, there has been no guarantee or actual movement in this direction. No land has been taken into trust for the purpose of establishing the new clinic. If the proposed lease relinquishment is approved, construction of the casino is in no way contingent upon construction of a new health clinic. None of the promises about new health clinics, remote health clinics, or anything else related to health clinics are in any way enforceable, either by the SIHC Corporation, or by the thousands of persons now served by the current clinic.

In fact, if the proposed lease relinquishment is approved, the only thing that is certain is this: the current clinic will shut down and be moved to trailers on the back of the property; a casino will go up on the current site, and the Indians and non-Indians alike who have used the clinic for the last decade will have to drive through a casino complex to get to the trailers they will then have to call their clinic.

Viejas does not question the integrity of the members of the Cuyapaipe tribe. While we have no doubt of their good intentions, there are still reasons to doubt the feasibility of the new health clinic facilities they have promised as a replacement for the current clinic. The Cuyapaipe tribe does not have the money to pay for a new health clinic. They have indicated that they intend to pay for the new health clinic with profits from their proposed casino. But they may be in for a surprise: the existence of a casino does not assure profits at all; it certainly doesn't assure immediate profits. Many tribal gaming facilities in San Diego are currently cutting staff and reducing hours, based on economic necessity. Furthermore, all their efforts to date (including a very expensive lobbying effort - that eight-member tribe may be the only tribe with more lobbyists than members) appear to have been paid for by a casino management company, Action Gaming Corporation from Michigan. We assume that Action Gaming will seek to recoup their investment before any profits are made available to construct a new clinic. While all this may seem like speculation, so to are the prospects for the replacement clinic facilities.

To repeat, the fundamental issue is this: the land was taken into trust for the benefit of seven tribes, and its use should not be changed without the approval of those seven tribes. This concept was incorporated in H.R. 5744, the Hunter-Filner-Cunningham (Attachment H) legislation from last year, which passed the House unanimously in the closing days of the 106th Congress. It is again incorporated in the bill before this committee today. That position is supported by the County Supervisor, and by the entire delegation from that part of San Diego County, as expressed in their letter to BIA.

Mr. Chairman, I should be clear that the Viejas Tribe's primary concern, and our only relevant concern, is the preservation of the health clinic. Some will undoubtedly accuse us of fearing competition from another nearby casino, but we should emphasize that we do not actually know if having another casino in the area would be a harm or a benefit. Rather, our general membership listened carefully to the accounts of some of our Tribal Elders about their efforts to establish a health clinic for all seven tribes and to get land into trust

for that purpose. They know that this was done at a time before gaming, when resources were extremely scarce. They were and are concerned about the current plan to undo the elders' hard work, and to jeopardize health care access, all for the financial gain of just one tribe and their outside investor.

I should emphasize that the Hunter-Filner bill does not say that Cuyapaipe may never have a casino on that site. Rather, it says that the lease relinquishment may not be approved until there is consensus among all seven tribes. The bill is intended to foster discussion and negotiation, and Viejas will be an active and constructive participant in any such negotiations. We have always supported the reasonable efforts of other tribes to improve their economic situation, and we will be similarly open with Cuyapaipe. However, as things are proceeding today, Cuyapaipe is seeking to press forward without regard for the concerns or wishes of other involved tribes, and we believe they will continue to do so unless this Congress or the BIA intervene.

In closing, Mr. Chairman, I should emphasize that the Congress is dealing with many weighty issues in these difficult times, and as grateful as I would otherwise be for your attention to this matter at any time, I and the Viejas tribe are doubly appreciative of your and your committee colleagues' taking time for us against the backdrop of the war on terrorism. Thank you for your time, and I look forward to answering any questions you may have.

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